Kenney Contractors, Inc. *and* Plumbers and Pipefitters Local Union No. 190 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO. Case 7–CA–41571

April 30, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS HURTGEN AND BRAME

Upon a charge filed by the Union on November 30, 1998, the General Counsel of the National Labor Relations Board issued a complaint on January 27, 1999, against Kenney Contractors, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On February 22, 1999, the General Counsel filed a Motion for Summary Judgment with the Board. On February 24, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted.

Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Respondent filed with the Region a letter dated February 10, 1999, which states in full as follows:

> We are responding to your formal complaint issued by the National Labor Relations Board against Kenney Contractors, Inc. We are not in any position to resolve this matter at this time. We are examining our options. We are not prepared to make any settlement at this time. We will make some resolution between now and March 18, 1999.

The Motion for Summary Judgment also states without contradiction that the Region, by letter dated February 12, 1999, advised the Respondent that its February 10 letter was inadequate to constitute an answer to the complaint, and further advised that, inasmuch as the Respondent's answer was overdue, unless a proper answer were received by February 17, 1999, a Motion for Summary Judgment would be filed.

We find that the Respondent's February 10, 1999 letter to the Region does not purport to be an answer to the complaint. As shown above, the Respondent's letter merely states that the Respondent "is not prepared to resolve this matter at this time" and that the Respondent was examining its "options." Further, this letter does not constitute a proper answer to the complaint allegations under Section 102.20 of the Board's Rules and Regulations because it fails to address any of the factual or legal allegations of the complaint, and therefore is legally insufficient under the Board's rules. See *American Gem Sprinkler Co.*, 316 NLRB 102, 103 (1995).[1]

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Dry Ridge, Kentucky, has been engaged in business as a heating and air conditioning contractor at jobsites in the State of Colorado and the State of Michigan. The Huron Ridge/-Heights apartment complex construction site, located in Ypsilanti Township, Michigan, where at all material times the Respondent has been engaged in the installation of hearing and air-conditioning units, is the only jobsite involved in this proceeding. During the 12-month period ending December 31, 1998, the Respondent, in conducting its business operations described above, had gross revenues in excess of $500,000 for the performance of services to customers located outside the State of Kentucky. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

All employees employed by employers who have authorized the Plumbing and Mechanical Contractors Association of Washtenaw County, Inc. (Association) to bargain for them, who perform work as described in article I, paragraph A of the current collective-bargaining agreement between the Association and the Charging Party Union, constitute a unit appropriate for the pur-

[1] Members Hurtgen and Brame note that the Respondent is pro se, and this may explain the technical failure of its February 10 response to the complaint. However, after the General Counsel apprised the Respondent of the inadequacy of its response, and told the Respondent of a new due date of February 17, the Respondent failed to respond at all. In these circumstances, Members Hurtgen and Brame grant summary judgment.

poses of collective bargaining within the meaning of Section 9(b) of the Act.

On or about July 28, 1998, the Respondent entered into a Memorandum of Agreement with the Union whereby it agreed to be bound by all terms and conditions of the collective-bargaining agreement between the Union and the Association, which by its terms is effective from June 1, 1997, to May 31, 2000, and agreed to be bound to such future agreements unless timely notice was given.

The Respondent, an employer engaged in the building and construction industry as described above, granted recognition to the Union as the limited exclusive collective-bargaining representative of its employees employed in the unit by entering into the Memorandum of Agreement referred to above without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act.

At all times since July 28, 1998, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the unit.

Since about late July 1998, and continuing to date, while the Respondent performed heating and air-conditioning work for Sycamore Construction Ltd. at the Huron Ridge/Heights jobsite, the Respondent, by its agents Laurel P. Kenney and E. Scott Robinson, repudiated its collective-bargaining relationship with the Union and refused to implement any of the provisions of the current collective-bargaining agreement in effect between the Association and the Union, including failing to make contractually required fringe benefit contributions for employees. These subjects relate to wages, hours, and other terms and conditions of employment of the unit employees and are mandatory subjects for the purposes of collective bargaining.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the limited exclusive bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) of the Act, we shall order the Respondent to recognize and bargain with the Union as the limited exclusive bargaining representative of the unit employees, to comply with the 1997–2000 collective-bargaining agreement with the Union, and to make whole the unit employees for any loss of wages or earnings they may have suffered as a result of the Respondent's failure to do so since about July 28, 1998, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 52 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, we shall order the Respondent to make all contractually required delinquent contributions owed to the various contractual fringe benefit funds, and to reimburse the Union and/or benefit funds for its failure to do so since about July 28, 1998, including any additional amounts due on behalf of the unit employees in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979), and by reimbursing them for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.[2]

ORDER

The National Labor Relations Board orders that the Respondent, Kenney Contractors, Inc., Dry Ridge, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Plumbers and Pipefitters Local Union No. 190 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO as the limited exclusive bargaining representative of the employees in the following unit:

> All employees employed by employers who have authorized the Plumbing and Mechanical Contractors Association of Washtenaw County, Inc. to bargain for them, who perform work as described in Article I, Paragraph A of the current collective-bargaining agreement between the Association and Plumbers and Pipefitters Local Union No. 190 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO.

(b) Failing and refusing to comply with the 1997—2000 collective-bargaining agreement between the Association and the Union, including failing to make contractually required fringe benefit contributions for unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

[2] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain with the Union as the limited exclusive bargaining representative of the employees in the unit set forth above, and comply with the terms and conditions of the 1997–2000 collective-bargaining agreement between the Association and the Union, including, but not limited to, making the contractually required fringe benefit contributions for unit employees.

(b) Make whole the unit employees for any loss of wages or earnings they may have suffered as a result of its unlawful conduct and by making the required contributions that have not been made since about July 28, 1998, and by reimbursing them for any expenses ensuing from its failure to make the required contributions, as set forth in the remedy section of this decision.

(c) Make all contractually required contributions and reimburse the Union and/or benefit funds for its failure to do so since about July 28, 1998, as set forth in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Dry Ridge, Kentucky, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 28, 1998.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to recognize and bargain with Plumbers and Pipefitters Local Union No. 190 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO as the limited exclusive bargaining representative of the employees in the following unit:

> All employees employed by employers who have authorized the Plumbing and Mechanical Contractors Association of Washtenaw County, Inc. to bargain for them, who perform work as described in Article I, Paragraph A of the current collective-bargaining agreement between the Association and Plumbers and Pipefitters Local Union No. 190 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO.

WE WILL NOT fail and refuse to comply with the 1997–2000 collective-bargaining agreement between the Association and the Union, including failing to make contractually required fringe benefit contributions for unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and, on request, bargain with the Union as the limited exclusive bargaining representative of the employees in the unit set forth above, and WE WILL comply with the terms and conditions of the 1997–2000 collective-bargaining agreement between the Association and the Union, including, but not limited to, making the contractually required fringe benefit contributions for unit employees.

WE WILL make whole the unit employees for any loss of wages or earnings they may have suffered as a result of our unlawful conduct and by making the required contributions that have not been made since about July 28, 1998, and by reimbursing them for any expenses ensuing from our failure to make the required contributions, with interest.

WE WILL make all contractually required contributions and reimburse the Union and/or benefit funds for our failure to do so since about July 28, 1998, with interest.

KENNEY CONTRACTORS, INC.